STATE OF MICHIGAN

IN THE SUPREME COURT

SAUGATUCK DUNES COASTAL ALLIANCE,

Plaintiff-Appellant,

v

SAUGATUCK TOWNSHIP; SAUGATUCK TOWNSHIP ZONING BOARD OF APPEALS; and NORTH SHORES OF SAUGATUCK, LLC,

Defendants-Appellees.
/

Supreme Court Nos. 160358, 160359

Court of Appeals Nos. 342588, 346677

Allegan County Circuit Court Nos. 2018-059598-AA, 2017-058936-AA

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APPELLEE NORTH SHORES OF SAUGATUCK, LLC'S SUPPLEMENTAL BRIEF IN OPPOSITION TO APPLICATION FOR LEAVE TO APPEAL

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STATEMENT OF APPELLATE JURISDICTION

Appellee North Shore of Saugatuck, LLC ("NorthShore") does not contest that this Court has jurisdiction to review Appellant Saugatuck Dunes Coastal Alliance's (the "Coastal Alliance") application for leave to appeal from the Court of Appeals' opinion dated August 29, 2019, as the application was filed within 42 days. MCR 7.303(B)(1); MCR 7.305(C)(2). NorthShore submits this supplemental brief as ordered by the Court in its May 8, 2020 Order.

STATEMENT OF QUESTIONS PRESENTED

1. When the Legislature readopted the "aggrieved party" standard for zoning appeals in the Michigan Zoning Enabling Act ("MZEA") in 2006, did it intend the term "aggrieved" to have the well-established meaning applied for half a century, which requires a party to show some special damages not common to others similarly situated?

Appellant answers: No.

Appellee answers: Yes.

The Court of Appeals answered: Yes.

The Circuit Court answered: Yes.

2. Did the Legislature intend the term "aggrieved" to have the same meaning and impose the same standard in Section 604 of the MZEA, where it refers to a "person aggrieved," as it has in Section 605 of the MZEA, where it refers to a "party aggrieved"?

Appellant answers: No.

Appellee answers: Yes.

The Court of Appeals answered: Did not answer.

The Circuit Court answered: Did not answer.

3. Given that the same harms could be alleged by any neighbor, business, or even tourist, and could arise from any development of this residentially zoned property, did Coastal Alliance fail to articulate special damages that (1) are not common to others in the community sharing the same interest and (2) arise out of the zoning decision appealed?

Appellant answers: Yes.

Appellee answers: No.

The Court of Appeals answered: No.

The Circuit Court answered: No.

INTRODUCTION

For over half a century, the traditional limitation that a party must be "aggrieved" by the zoning decision to seek judicial review has been interpreted by Michigan courts as requiring a showing of some "special damage" not common to others similarly situated. This standard naturally allows the applicant to appeal an adverse zoning decision on its application, since that decision uniquely affects that person's personal land use rights. At the same time, this standard also appropriately prevents third parties from foisting the local government's duty to protect public interests onto the courts as if they were super zoning commissions. As explained below, this is exactly what the Coastal Alliance is attempting to do here, and the lower courts properly rejected that maneuver.

At one time, the Legislature used a more liberal standard that allowed any person "having an interest affected by the zoning ordinance" to appeal to the circuit court. See *Brown v E Lansing Zoning Bd of Appeals*, 109 Mich App 688, 698; 311 NW2d 828 (1981). But when the Legislature enacted the Michigan Zoning Enabling Act in 2006, it dispensed with the "interest affected" standard and required a party to be "aggrieved" by the zoning decision to appeal to circuit court in every instance. Under the axioms of statutory construction, it is presumed the Legislature intended that language to have the same meaning that it had previously acquired in the jurisprudence, i.e., that it intended to adopt the traditional "aggrieved" standard. There is no indication to the contrary.

Under Michigan's zoning jurisprudence, it is commonly said that to be "aggrieved," one must show some special damage to a legally cognizable right or protected interest that is not common to similarly situated property owners. The courts have never held, however, that the person must be a property owner to appeal, nor have they held that a comparison to other

"similarly situated property owners" is always required. Only when the party claims special damage as a property owner is comparison made to other property owners. When something other than a property right or interest is allegedly infringed, the Court of Appeals in this case and in prior cases has looked at whether those persons similarly situated with a similar interest at stake would experience the same kind of harm. Whether the interest is property rights or otherwise, this litmus test has generally served well to distinguish those parties truly asserting special damage (i.e., harm to a legally cognizable private right or protected interest) from those merely complaining that the outcome does not serve the public's best interests.

While MZEA Section 604 allows a "person aggrieved" to appeal to the zoning board of appeals and MZEA Section 605 only allows a "party aggrieved" to appeal to circuit court, that distinction in terms makes no difference here. NorthShore has never disputed that Coastal Alliance's members qualified as persons under Section 604 and parties under Section 605, and the term "aggrieved" presumably has the same meaning in both sections. Though this standard is applied to different decisions—the planning commission's decision under Section 604 and the zoning board of appeals' decision under Section 605—the analysis under both sections in this case is the same because the outcome of both decisions is the same: both decisions result in NorthShore holding a valid PUD and Special Approval Use for its property. To be aggrieved under either section, the Coastal Alliance must show that granting such permission somehow causes special damage to the Coastal Alliance that is not common to others in the community who share a similar interest and are similarly situated.

The ZBA, the trial court, and the Court of Appeals all conducted this same analysis and all correctly concluded that the Coastal Alliance was not "aggrieved" by the decisions appealed. At this point, the Coastal Alliance does not even argue that its members would satisfy the

traditional "aggrieved" standard, except for the Bilys. But the Bilys do not satisfy that standard either for numerous reasons explained in more detail below. In short, the Bilys' interest in preventing NorthShore from ever developing its property—which NorthShore can do as a matter of right under the current zoning ordinance—is not a property right or other protectable interest. The alleged impacts on property values are also speculative and, if proven, are the kind of harm that other similarly situated property owners would also experience. The alleged impacts on viewshed and use of the river would likewise be felt in common with other similarly situated property owners and, frankly, any tourist using the river. Finally, none of these alleged harms actually arise out of the decision appealed; they all arise out of the underlying fact that the property will be developed, which again, is a right NorthShore already enjoys under the zoning ordinance, regardless of the specific zoning approvals given.

COUNTER-STATEMENT OF FACTS[1]

The parties

In January of 2017, NorthShore purchased the 300-plus acres sitting directly north of the Kalamazoo River channel from Singapore Dunes, LLC (the "NorthShore Property") (the "green" line on the figure below). (8/9/18 NorthShore's Circuit Court Br, Case No. 2018-059598-AA, at 8.) This appeal involves only a small portion of the NorthShore Property known as the Harbor Cluster currently zoned R-2 (residential) (the "light blue" area in the figure below).

[1] This counter-statement of facts is largely the same as the statement of facts in NorthShore's Answer to the Application for Leave to Appeal.

Uses such as single- and two-family homes, churches, community buildings, farming operations, accessory buildings, and shared waterfront access properties are all permitted within the R-2 district without any special approval. (Appellee's App 0131b.) As is shown on the figure above, there are seven building sites along Lake Michigan (the "Lake Cluster") and eight building sites along the channel (the "Channel Cluster"). Neither of these "clusters," nor the "laydown area" complained about in the Coastal Alliance's brief, nor any of the other more than 250 acres comprising the NorthShore Property, are part of the PUD which is the focus of this appeal.

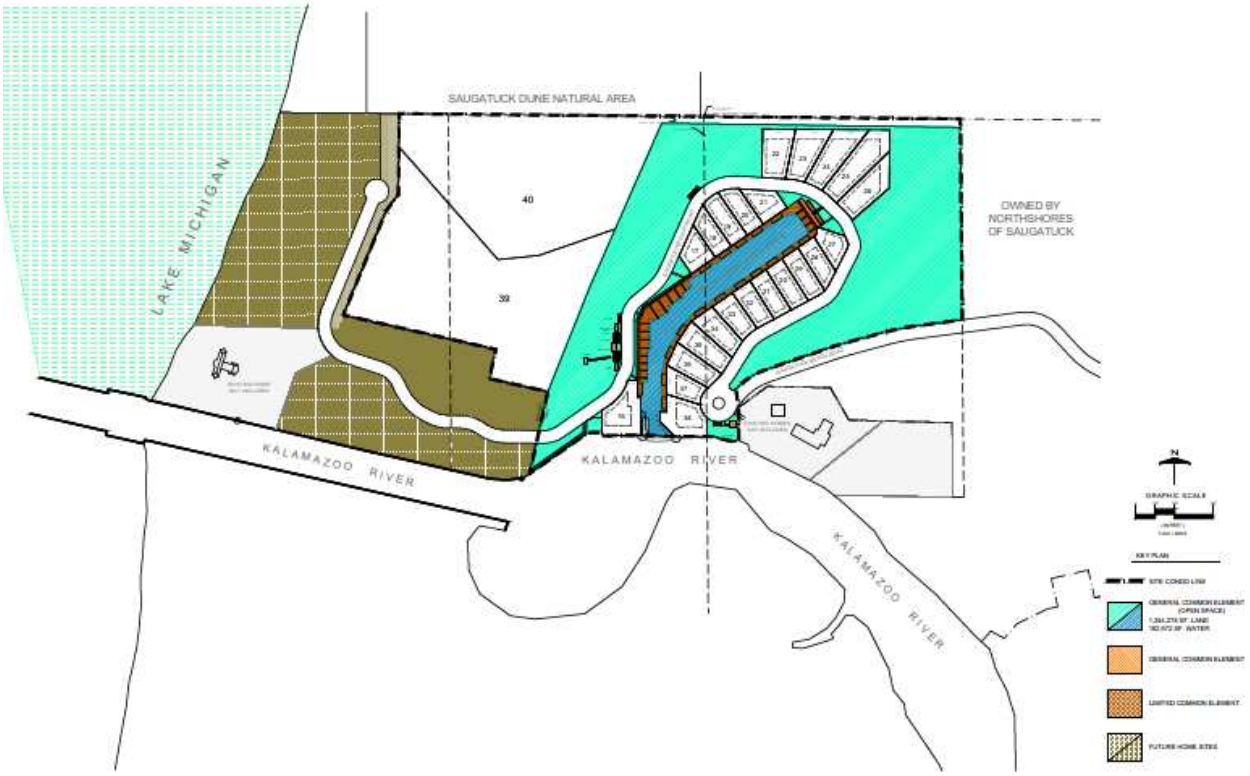
For more than a decade, the Coastal Alliance has opposed every effort to develop the NorthShore Property. The Coastal Alliance has appealed to the Saugatuck Township Zoning Board of Appeals ("ZBA") and the circuit court multiple times, and has initiated contested cases on more than one occasion to challenge approvals by the Michigan Department of Environment, Great Lakes, and Energy ("EGLE").[2] At a Coastal Alliance board meeting on June 27, 2017, the

[2] EGLE was formerly known as the Michigan Department of Environmental Quality ("MDEQ").

Coastal Alliance accurately described its strategy for opposing development of the NorthShore Property as "death by a thousand paper cuts." (Appellee's App 0044b.)

Approval of the Planned Unit Development and Special Approval Use

On January 30, 2017, NorthShore submitted an application to the Saugatuck Township Planning Commission for preliminary approval of a planned unit development/site condominium development within the Harbor Cluster area consisting of 23 residential site condominium units and a community building around a boat basin ("PUD"). (Appellant's App 0001a.) NorthShore later supplemented its application to also include a request for special use approval for a private marina containing 33 boat slips ("Special Approval Use").[3]



[3] Marinas are permitted in the R-2 district (and only in this district) as a "special approval use." Saugatuck Twp Ord § 40-1046. (Appellee's App 0143b.)

(Appellant's App 0009a.) Under the Saugatuck Township Zoning Ordinance, and within the same footprint that the PUD and Special Approval Use occupies, NorthShore could have developed 33 residential home sites (Ordinance § 40-275) and 48 boat slips (Ordinance § 40-908) by right, without obtaining any special approvals from the Planning Commission.[4] (Appellee's App 0132b-0137b, 0141b.) NorthShore sought a PUD approval instead because a PUD provides for a "controlled degree of flexibility" in the layout of residences and open space. (Appellee's App 0133b.) NorthShore sought the Special Approval Use so that it could configure boat slips in one centralized location for use of all residents—including those without waterfront lots.[5]

The Planning Commission held three public hearings regarding NorthShore's application on February 28, 2017, March 28, 2017, and April 26, 2017. The Coastal Alliance's members attended and participated in all three of these public meetings.

In opposition to the project, the Coastal Alliance asserted that NorthShore's proposed development was prohibited by the Township's Zoning Ordinance. (Appellant's App 0060a-0061a.) In particular, the Coastal Alliance quoted selective portions of Section 40-910(h) in an effort to turn it into an absolute prohibition on the excavation of a channel. The Coastal Alliance quoted (and continues to quote) language stating: "In no event shall a canal or channel be excavated for the purpose of increasing the water frontage." The Coastal Alliance contends this is "the central legal issue in this zoning appeal." (See Appellant's Suppl Br 2, 43.)

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[4] This calculation of "by right" boat slips does not take into account the additional water frontage that NorthShore's property has on the Kalamazoo River both to the east and west of the PUD footprint.

[5] It is important to note the scope of permitted development that NorthShore has "by right" under the Township zoning ordinance without any special approvals from the Planning Commission because, as will be further explained in Section III.C below, the Coastal Alliance's alleged harms do not arise from the actual approvals being appealed. Instead, they arise from <u>any</u> development of the NorthShore Property.

The full provision states: "In no event shall a canal or channel be excavated for the purpose of increasing the Water Frontage *required by this section*." (Appellee's App 0142b (emphasis added).) That section requires a certain amount of Water Frontage to permit a given number of docks along shared "Waterfront Access Property." (Appellee's App 0139b-0140b.) In other words, when there is shared "Waterfront Access Property," the additional water frontage created by excavating a canal or channel may not be used in calculating the number of docks permitted under Section 40-190.

The Planning Commission saw through the Coastal Alliance's selective quoting and found that Section 40-910(h) did not apply in this instance because NorthShore's proposed PUD would not have any shared "Waterfront Access Property" as that term is defined by township ordinance. (Appellee's App 0037b) Each of the residential site condominium units would have its own un-shared broadside mooring slip. (*Id.*) Thus, the Planning Commission concluded the 33-slip private marina was a Special Approval Use under Sections 40-1046 and 40-272(12), and not to be analyzed under Section 40-910. (*Id.*) There was also no dispute that NorthShore's existing shoreline had enough linear feet of waterfrontage to build the number of docks requested even if Section 40-910 applied, but the Planning Commission never had to reach that issue. At the April 26, 2017 meeting, the Planning Commission unanimously approved NorthShore's request for a Special Approval Use for a marina. (Appellant's App 0019a.)

At that same meeting, the Planning Commission also granted preliminary approval, with conditions, of NorthShore's proposed PUD. (Appellant's App 0017a.) One of the conditions—which was specifically requested by the Coastal Alliance's members—was that the Planning Commission would retain an outside planner from McKenna Associates ("Outside Planner") to review NorthShore's proposal and to advise the Planning Commission during the final approval

stage of the PUD. (*Id*.) The Outside Planner applauded NorthShore's "conservation based" design approach to this PUD, noting that "[t]his design approach focuses the development to the interior of the property, where development has previously occurred, and results in the preservation of the topography and landscape in its natural state and contour on almost 50% of the property." (Appellee's App 0050b.)

On October 23, 2017, the Planning Commission gave NorthShore final approval of its proposed PUD.

The Coastal Alliance appeals the preliminary approval

On June 30, 2017, the Coastal Alliance appealed the Planning Commission's preliminary approval to the ZBA.[6] (Appellant's App 0022a.) The Coastal Alliance presented the affidavits of seven of its "members" in support of its claim that it is an aggrieved party—Ms. Birkholz (deceased), Ms. Bily-Wallace, Ms. Bily, Mr. Van Howe, Mr. Johnson, Mr. Engel, Mr. Deam, and Mrs. Engel (Appellant's App 0028a-0057a.) The Coastal Alliance alleged, among other things, that:

- the proposed boat basin will reduce the recreational use of the river due to increased boat traffic and safety concerns (Appellant's Suppl Br 34, 38; Appellant's App 0043a, 0051a);
- the proposed boat basin will impact the aesthetic beauty and surrounding landscape on the Kalamazoo River (Appellant's Suppl Br 34, 38; Appellant's App 0052a-0053a);
- the proposed boat basin will impact the economic value of the property due to a change in viewshed and the character of the river (Appellant's Suppl Br 34);

[6] The Coastal Alliance initially appealed the Planning Commission's preliminary approval directly to the circuit court, but the circuit court dismissed the appeal because the Coastal Alliance had failed to exhaust its administrative remedies.

- the dredging of the boat basin and the associated laydown area will affect dunes, plants, and wildlife on nearby lands and will contribute to the risk of destabilization of the dune and erosion (Appellant's Suppl Br 35);

- the project will have negative aesthetic impacts to the members of the public that might be boating on Lake Michigan and the Kalamazoo River, or that are hiking in the State Park (Appellant's Suppl Br 38; Appellant's App 0028a-0031a);

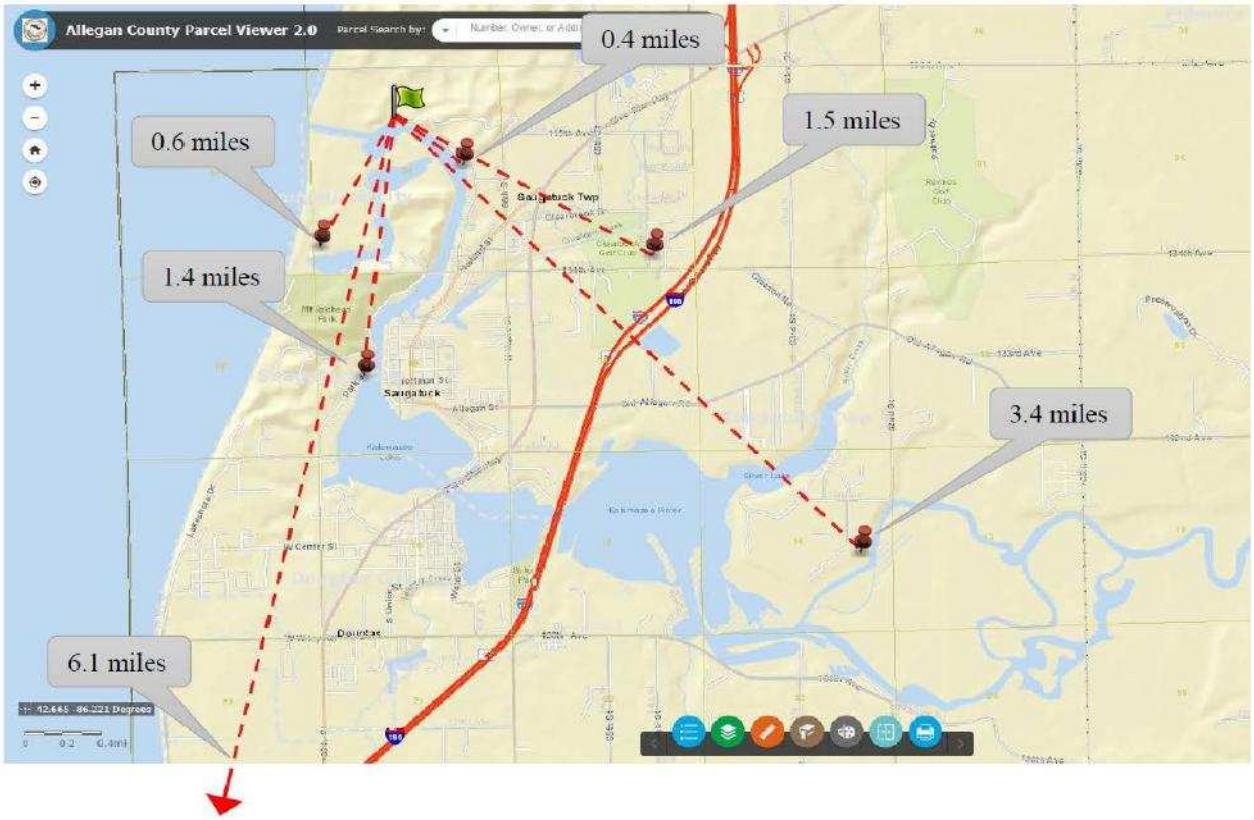
- the alleged environmental, aesthetic, and recreational harms may affect property values (Appellant's Suppl Br 38-39; Appellant's App 0032a-0034a);

- construction of the boat basin will cause harm to local business owners that rely on the Kalamazoo River and its natural features (Appellant's Suppl Br 38; Appellant's App 0041a-0042a); and

- the proposed boat basin will come within 200 feet of the Patricia Birkholz Natural Area and will threaten her legacy (Appellant's Suppl Br 38; Appellant's App 0035a-0036a).

While some of these affiants, or the families of the affiants, do own (or did own) property within the Saugatuck/Douglas area, most of their properties are located at least half a mile from the mouth of the proposed boat basin.[7] The figure below shows approximately how far removed these affiants are from the proposed development:

[7] The addresses of these members are stated in the affidavits attached to the Coastal Alliance's initial appeal to the ZBA. The Allegan County GIS system was used to calculate the distances.



Even the cottage owned by the Bily family—the only family the Coastal Alliance claims meets the existing aggrieved-party standard—is almost a half mile away.

The allegations of harm from the development have remained virtually identical over the years, even though the Coastal Alliance claims that the previous development it opposed was "a completely different project" that is "vastly different" from the current plans. (Coastal Alliance's COA Br, Case No. 342588, p 2.) Specifically, in 2014, the Coastal Alliance opposed what it described as an "interior road project," in contrast to this current appeal which the Coastal Alliance refers to as a "boat basin project." Below is a table comparing the alleged harm the Coastal Alliance asserts these projects would cause[8]:

[8] If nothing else, this comparison table demonstrates that the Coastal Alliance's alleged harms arise from any development of the NorthShore Property, not from the specific approvals being appealed. See Section III.C of this brief below.

"Interior Road Project"	"Boat Basin Project"
The road project "will do irreparable damage to the dune habitat." (Appellee's App 0022b.)	The boat basin project "will do irreparable damage to the dune habitat." (Appellee's App 0078b.)
The road project will "devastate the entire dunes ecological system." (Appellee's App 0022b.)	The boat basin project will "devastate the entire dunes ecological system." (Appellee's App 0078b.)
The road project "will have aesthetic impacts from not only Lake Michigan and [the] Kalamazoo River, but also the adjacent State Park." (Appellee's App 0022b.)	The boat basin project "will have aesthetic impacts from not only Lake Michigan and [the] Kalamazoo River, but also the adjacent State Park." (Appellee's App 0078b.)
The road project will "affect property values in the area" and "an increase in property taxes." (Appellee's App 0022b.)	The boat basin project will "affect property values in the area" and "an increase in property taxes." (Appellee's App 0079b.)
The road project will "affect recreational activities in the area." (Appellee's App 0022b.)	The boat basin project will "affect recreational activities in the area." (Appellee's App 0078b.)
The road project will "detract from the quality of adjacent public areas." (Appellee's App 0022b.)	The boat basin project will "detract from the quality of adjacent public areas." (Appellee's App 0079b.)
The road project "is inconsistent with the tri-community master plan." (Appellee's App 0022b.)	The boat basin project "is inconsistent with the tri-community master plan." (Appellee's App 0079b.)

On October 11, 2017, following a public hearing, the ZBA determined that the Coastal Alliance lacked standing to appeal the Planning Commission's approval, specifically finding that

Coastal Alliance did not adequately articulate "how it would suffer any special damage, different from the damage that would allegedly be sustained by the general public, with reference to the development of the subject real estate." (Appellant's App 0074a.)

On November 10, 2017, the Coastal Alliance appealed the ZBA's decision to the circuit court. On February 6, 2018, following briefing and oral arguments, the circuit court determined that the Coastal Alliance was not an aggrieved party under the MZEA and thus was not empowered to invoke the appellate jurisdiction of the circuit court. (Appellant's App 0082a.)

On February 27, 2018, the Coastal Alliance filed a claim of appeal with the Court of Appeals.

The Coastal Alliance appeals the final approval

On December 7, 2017, the Coastal Alliance appealed the Planning Commission's final approval to the ZBA. (Appellant's App 0087a.) On April 9, 2018, following a public hearing, the ZBA again determined that the Coastal Alliance lacked standing to appeal the Planning Commission's approval. Specifically, the ZBA held: "The SDCA has not been able to articulate how it would suffer any special damage, different from damage that would allegedly be sustained by the general public, with reference to the development of the subject real estate." (Appellant's App 0094a.)

On May 9, 2018, the Coastal Alliance appealed the ZBA's decision to the circuit court. The Coastal Alliance also added two original claims for declaratory relief and nuisance per se. On November 14, 2018, the circuit court again determined that the Coastal Alliance was not an aggrieved party under the MZEA and thus was not empowered to invoke the appellate jurisdiction of the circuit court. The court noted that "[t]here has been no showing of unique harm that this Court is aware of. Especially in light of the evidence that's been presented to support that this is an environmentally friendly project" (Appellee's App 0124b), and further stated that "the

SDCA has not shown that they've suffered special damages not common to other property owners similarly situated" (Appellee's App 0126b). The circuit court dismissed all of the Coastal Alliance's claims.

On December 5, 2018, the Coastal Alliance filed another claim of appeal with the Court of Appeals.

The Court of Appeals' decision

Both of the Coastal Alliance's appeals were subsequently consolidated by the Court of Appeals. On August 29, 2019, the Court of Appeals affirmed the circuit court's decisions dismissing the Coastal Alliance's appeals for failing to satisfy the aggrieved-party standard set forth in MCL 125.3606(1). Relying on the recent decision in *Olsen v Chikaming Township*, 325 Mich App 170; 924 NW2d 889 (2018), the Court of Appeals rejected the Coastal Alliance's assertion that the concepts of "standing" and "aggrieved party" are indistinguishable because "the aggrieved party analysis refers to 'other property owners similarly situated,' whereas the standing analysis refers to 'the citizenry at large.' " (Appellant's App 0102a.) The court went on to state that the Coastal Alliance "critically misapprehends the analysis by referring to injuries that differ 'from the public at large.' " (*Id.*) Specifically, the court held that the harms alleged in the Coastal Alliance's affidavits did not show that the affiants will suffer harms distinct from other similarly situated property owners because "all of the articulated concerns are either speculative, broad environmental policy matters, or pertain to harms that could be suffered by any neighbor,

business, or tourist." (*Id.*) The court, therefore, affirmed the circuit court's determination that the Coastal Alliance was not an aggrieved party pursuant to MCL 125.3605.[9]

ARGUMENT

I. By readopting the "party aggrieved" language in Section 605 of the MZEA, the Legislature intended to reestablish the pre-1979 standard for who can appeal a zoning decision.

The first question this Court posed in its May 8, 2020 Order is whether the "party aggrieved" standard of MCL 125.3605 requires a party to show some "special damages not common to other property owners similarly situated." This is purely a question of legislative intent. To determine the Legislature's intent, this Court should look both at the well-settled meaning of this term in the context of zoning appeals and the legislative history of the MZEA. See, e.g., *People v Gardner*, 482 Mich 41, 58; 753 NW2d 78 (2008) ("Some historical facts may allow courts to draw reasonable inferences about the Legislature's intent because the facts shed light on the Legislature's affirmative acts."). In doing so, the Court will see that the Legislature intended the term "aggrieved" to have the meaning that was well established in Michigan's zoning jurisprudence at the time.

However, the issue of whether the special damages must be different from those of "similarly situated property owners" is a strawman raised by the Coastal Alliance. As the Coastal Alliance itself concedes, the Court of Appeals has never interpreted that term in any case—including this one—as always requiring a comparison to "similarly situated property owners."

[9] The Court of Appeals also remanded the Coastal Alliance's original claims for declaratory judgment and nuisance per se, and directed the circuit court to address Coastal Alliance's standing to bring those claims and the substantive merits of those claims, as applicable. (Appellant's App 0103a.)

Nor has it ever held that this term restricts appeals to only property owners. Instead, the standard only requires the would-be appellant to show the decision appealed has caused special damages that are not common to others in the community who share the same legally cognizable interest. The Court of Appeals in this appeal did not require the Coastal Alliance members to be property owners or to experience harms uncommon to similarly situated property owners, so the question is not even squarely before the Court.

A. In light of the legislative history of the MZEA, the Court should easily conclude that the Legislature intended "party aggrieved" to have its well-established meaning in the zoning jurisprudence.

When interpreting statutory language that previously has been subject to judicial interpretation, this Court presumes that the Legislature uses the words in the sense in which they have been previously interpreted. *People v Wright*, 432 Mich 84, 92; 437 NW2d 603 (1989) (interpreting "indeterminate sentence" in light of the "Legislature's acquiescence to the [prior] statutory interpretation" of the phrase); *McCormick v Carrier*, 487 Mich 180, 195; 795 NW2d 517 (2010) (interpreting "serious impairment of body function" in light of previous judicial interpretations); *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 442; 716 NW2d 247 (2006) (finding that the Legislature intended the common law meaning of "mutual mistake of fact" when it incorporated that term into a statute in light of interpretations dating to 1887). After all, "the Legislature is presumed to be aware of judicial interpretations of existing law when passing legislation." *Ford Motor Co*, 475 Mich at 439-440. It should not be assumed that language chosen by the Legislature was inadvertent. *Bush v Shabahang*, 484 Mich 156, 169; 772 NW2d 272 (2009).

At different times prior to enactment of the MZEA in 2006, the Legislature had employed two different standards: the "aggrieved" standard and the "interest affected" standard. When it enacted the MZEA, the Legislature decided to discontinue the "interest affected" standard and

use only the "aggrieved" standard, knowing exactly how that term would be interpreted under existing precedents.

Prior to 1979, Michigan's City and Village Zoning Act used the term "person aggrieved" to describe who could appeal to a zoning board of appeals and used the term "party aggrieved" to describe who could appeal a zoning decision[10] to a circuit court. See MCL 125.585(a); MCL 125.590. The pertinent provisions read as follows:

> An appeal may be taken [to the zoning board of appeals] by a person aggrieved, or by an officer, department, board, or bureau of the city or village. [MCL 125.585(a).]
>
> Any party aggrieved by any order, determination or decision of any officer, agency, board, commission, board of appeals, or the legislative body of any city or village, made pursuant to the provisions of section 3a of this act may obtain a review thereof both on the facts and the law, in the circuit court for the county wherein the property involved or some part thereof, is situated. [MCL 125.590.][11]

The Court of Appeals first interpreted the term "aggrieved" in 1967 in *Joseph v Grand Blanc Twp*, 5 Mich App 566, 566; 147 NW2d 458 (1967). After the appellant appealed a zoning board order, the trial court granted summary judgment for the board on the basis that the appellant could not show any special damages because he was not an abutting property owner. *Id.* at 570. The Court of Appeals found that for a nonabutting property owner to be an aggrieved party, "[he] must allege and prove that he has suffered a substantial damage which is not common to other property owners similarly situated." *Id.* at 570-571 (citing *Victoria Corp v Atlanta*

[10] The only zoning decisions that could be appealed to the circuit court under the City and Village Zoning Act prior to 1979 were decisions involving nonconforming uses. MCL 125.590.

[11] Prior to 1979, the Township Zoning Act also used the term "person aggrieved" to describe who could appeal to a zoning board of appeals, MCL 125.290; however, it allowed "any person having an interest affected" by a zoning ordinance to appeal the zoning board of appeals' decision to the circuit court. MCL 125.293.

Merchandise Mart, Inc, 101 Ga App 163; 112 SE2d 793 (1960)). The appellant claimed his property would be subject to increased traffic which would result in economic and aesthetic harm, but the Court of Appeals found that those damages were not unique to the appellant and would be shared by others in the community. *Id.* at 571.

In 1975, *Unger v Forest Home Twp*, 65 Mich App 614; 237 NW2d 582 (1975), reaffirmed *Joseph*'s holding that increased traffic and general economic and aesthetic losses are insufficient to demonstrate special damages. 65 Mich App at 617. In that case, the township granted a building permit for the construction of a condominium. *Id.* at 616. The appellant alleged that he owned real property in the township bordering on the same lake as the land in question. *Id.* at 618. The Court of Appeals reiterated that "[i]n order to have any status in court to challenge the actions of a zoning board of appeals, a party must be "aggrieved," which the court again defined to mean that "[t]he plaintiff must allege and prove that he has suffered some special damages not common to other property owners similarly situated." *Id.* at 617. Because the appellant had alleged, at most, harms from increased traffic and decreased property values, the court dismissed his appeal. *Id.* at 618.

Brink relied on *Unger* and *Joseph* to distinguish parties deserving statutory notice from those that qualify as aggrieved parties. *W Michigan Univ Bd of Trustees v Brink*, 81 Mich App 99, 102; 265 NW2d 56 (1978). In *Brink*, the court addressed a provision in § 11 of the City and Village Zoning Act, which stated that "[a]ny person required to be given notice" under the Act is a "necessary party" for the review of zoning decisions. *Id*. at 102. Under the Act, the plaintiff was entitled to notice as a property owner within 300 feet of the property for which the Kalamazoo ZBA had granted an expansion of a nonconforming use and variances. *Id*. at 100-101. The plaintiff argued that this same section gave him standing to appeal, regardless of whether he was

an aggrieved party. *Id.* The Court of Appeals rejected this interpretation of the statute, noting that designating such a person a "necessary party" to an appeal did not in itself grant standing to file an appeal. *Id*. The Court observed that the aggrieved party requirement is "a standard limitation in state zoning acts for review of zoning board of appeals decisions," which has "repeatedly been recognized and applied in the decisions of this Court." *Id.* The court further clarified that if the Legislature had wanted to grant all plaintiffs with the right to notice the additional right to appeal it could have done so. *Id.*

The *Brink* court also noted that the appellant's interpretation would "clog . . . courts with suits by parties who could allege no legally cognizable interest in the outcome." *Id.* at 102-103. Citing to the language in *Unger*, the court reiterated that to qualify as an "aggrieved party," the plaintiff "must allege and prove that he has suffered some special damages not common to other property owners similarly situated." *Id.* at 104. Ultimately, the court held that the "plaintiff's financial interest in throttling the development of neighboring properties is not the kind of legally protectable property right or privilege" sufficient to meet the aggrieved party standard. *Id.* at 105.

In *Village of Franklin v City of Southfield*, 101 Mich App 554, 557; 300 NW2d 634 (1980), also decided under the City and Village Zoning Act, the Court of Appeals further defined the standard by clarifying that an appellant is not "aggrieved" simply by owning land adjoining the proposed development. 101 Mich App at 557. In that case, the Southfield City Council approved a plan for a new residential and commercial development, which the Village of Franklin and an individual landowner appealed to the Southfield ZBA. *Id.* at 556. The ZBA declined to hear the appeal for lack of jurisdiction, and the appellants filed a complaint in circuit court. *Id.* The circuit court judge granted summary judgment for the city, finding that the appellants had

not alleged and proved special damages. *Id.* The Village of Franklin had cited only its status as an adjoining community as qualification for its challenge, and the individual landowner appellant similarly relied on her status as an adjoining landowner. *Id.* at 557. The Court of Appeals held that ownership of adjoining property alone was insufficient without proof of special damages. *Id.* at 558. Relying on *Brink*, the court cited the " 'general rule that [t]hird parties will be permitted to appeal to the courts as persons aggrieved if they can show that . . . their property will suffer some special damages as a result of the decision of the board complained of, which is not common to other property owners similarly situated*"* and noted that " 'if adjoining landowners could suffer such special damages, then they can easily plead them. If the board's decision does not pose a threat of unique harm to the neighbor, then the courts would be ill-served by a rule allowing [the] suit.' " *Id.* at 558 (quoting *Brink*, 81 Mich App at 103 n 1).

In 1979, the Legislature amended the City and Village Zoning Act to implement the more relaxed "interest affected" standard for appeals to circuit court.[12] *Brown v East Lansing Zoning Bd of Appeals*, 109 Mich App 688, 697-698; 311 NW2d 828 (1981). According to the Court of Appeals, "the Legislature's decision to amend the language of the provisions governing standing was in response to this Court's opinion in *Brink*, [81 Mich App 99]." *Id.* at 698. The court went on to note:

> In *Village of Franklin*, this Court expressly relied on the fact that the appeal in that case was taken under M.C.L. 125.590; M.S.A. s 5.2940, which requires a party to be "aggrieved" in order to have standing to appeal. In the present case, on the other hand, plaintiffs' appeal was taken under M.C.L. 125.585(6); M.S.A. s

[12] This new provision allowed persons with an "interest affected" by the zoning ordinance to appeal to the circuit court, MCL 125.585(6); however, decisions involving nonconforming uses were still subject to the "party aggrieved" standard, MCL 125.590. The Township Zoning Act was amended in 1979 to move the circuit court appeal provision, with its "interest affected" standard, to a new section. MCL 125.293a. Both statutes retained the "person aggrieved" standard for appeals to the ZBA after the 1979 amendments. MCL 125.585(5); MCL 125.290.

> 2.2935(6), which requires only that a person have "an interest affected by the zoning ordinance." [*Id.* at 699.]

The *Brown* court ultimately held that "the fact that plaintiffs have an interest affected by defendant's decision to grant the variance is manifest in their active opposition to the variance and their participation in the different hearings." *Id.*[13]

In 2006, the Legislature reversed course. In consolidating three previous zoning enabling acts for cities and villages, townships, and counties into the MZEA, *Whitman v Galien Twp*, 288 Mich App 672, 679; 808 NW2d 9 (2010), the Legislature also decided to revert to the narrower "aggrieved" language. This change in statutory language is presumed to reflect a legislative change in the meaning of the terms. *Bush*, 484 Mich at 167; *Wright*, 432 Mich at 92. Furthermore, "[w]hen a term has received past judicial interpretation, the Legislature is presumed to have intended the same meaning." *Wright*, 432 Mich at 92. The only conclusion that should be drawn from the Legislature's decision to alter the terms of the statute and revert to a prior standard is that it intended to restore the "aggrieved" standard employed prior to 1979.

The Court of Appeals in *Olsen* looked to the prior case law to determine what the prior interpretation of this term had been and then coalesced those decisions into a well-reasoned and instructive opinion. The *Olsen* court held that:

> To demonstrate that one is an aggrieved party under MCL 125.3605, a party must "allege and prove that he [or she] has suffered some *special damages not common to other property owners similarly situated*[.]" *Unger*, 65 Mich. App. at 617. Incidental inconveniences such as increased traffic congestion, general aesthetic and economic losses, population increases, or common environmental changes are insufficient to show that a party is aggrieved. *See id.*; *Joseph*, 5 Mich. App. at 571. Instead, there must be a unique harm, dissimilar from the effect that *other similarly situated property owners* may experience. *See Brink*, 81

[13] In dicta, the court then went on to analyze the "special damages" and conclude that they would have met the traditional "aggrieved" party standard anyway. *Brown*, 109 Mich App at 699-701.

> Mich. App. at 103 n. 1. Moreover, mere ownership of an adjoining parcel of land is insufficient to show that a party is aggrieved, *Village of Franklin*, 101 Mich. App. at 557-58, as is the mere entitlement to notice, *Brink*, 81 Mich. App. at 102-03. [*Olsen*, 325 Mich App at 185 (emphases added).]

For every single ruling in *Olsen*, the Court of Appeals relied on decisions applying the law as it existed before the 1979 amendment to interpret the term "aggrieved" in the MZEA according to its well-established meaning. See *id.* at 182-185 (relying on *Vill of Franklin*, 101 Mich App at 557; *Brink*, 81 Mich App 99; *Unger*, 65 Mich App at 617; *Joseph*, 5 Mich App at 571; and others). The court appropriately refused to presume that the Legislature was ignorant of that well-established meaning when it chose to return to that standard in the MZEA. See *Ford Motor Co*, 475 Mich at 439-440.

Had the Legislature intended to create a broader category of zoning appellants than those traditionally classified as "aggrieved" under long-standing Michigan zoning jurisprudence, it could have stuck with the broader "interest affected" standard instead of returning to the "aggrieved" standard. The interest affected standard closely resembles the standard for standing established in *Lansing Schools Education Association v Lansing Board of Education*, which can be established by merely showing a "substantial interest" that is affected in a manner different from the citizenry at large. 487 Mich 349, 372; 792 NW2d 686 (2010) ("A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large . . . ."). Instead, it chose the more narrowly defined "aggrieved" standard, which limits the pool of appellants to those who can show special damages not common to others sharing interests similar to those asserted by the appellant.

B. The "aggrieved" standard does not require and has never required the appellant to be a property owner or always suffer an injury different from similarly situated property owners.

The Coastal Alliance initially makes the strawman argument that the prior standard for who is "aggrieved" is wrong because the Legislature would have used the term "property owner" instead of "party" or "person" if it had intended to limit zoning appeals to property owners. But neither the Court of Appeals in this case nor any other case has ever held that only property owners could appeal a zoning decision. And the Coastal Alliance is thus forced to concede later in its brief that "none of these cases [using the phrase 'similarly situated property owner'] held that one ***must*** be a property owner to possess standing, and none even needed to address that question." (Appellant's Suppl Br 19 (emphasis in original).) The Coastal Alliance even concedes that "it is logical that all of the opinions would refer to property ownership, as that was the alleged basis for standing in each instance." (*Id*.) NorthShore completely agrees with both of these concessions.

The Coastal Alliance then pivots to argue that the Court of Appeals has been somehow inconsistent in its application of the "aggrieved" standard by declining to hold that they must be property owners and instead comparing appellants' asserted interest to that of other "community members" and "neighbors" when assessing whether they are aggrieved. This is not an inconsistency. Rather, it demonstrates that the critical issue has never been whether the appellant was a "property owner," but rather, whether the appellant had suffered "special damages"—i.e., unique harms different from others who could assert the same interest, be it property owners, business owners, neighbors, tourists, or community members generally. See *Deer Lake Prop Owners Ass'n, v Indep Charter Twp*, No. 343965, 2019 WL 5092617, at *6 (Mich Ct App, Oct 10, 2019) (comparing appellants' alleged damages to "other lake users" and "similarly situated neighbors"); *Kingsbury Country Day Sch v Addison Twp*, No. 344872, 2020 WL 814703, at *4 (Mich

Ct App, Feb 18, 2020) (comparing appellants' harm of loss of enrollment and safety to other "property owners"); *Baker v Twp of Bainbridge*, No. 347362, 2020 WL 2096049, at *4 (Mich Ct App, Apr 30, 2020) (finding the appellant's harm unique because there was no "property similarly situated"); *Ansell v Delta Co Planning Comm*, No. 345993, 2020 WL 3005856, at *4 (Mich Ct App, June 4, 2020) (noting that appellants just "happen to be residents scattered about the community" who will not suffer greater harms than "neighbors or others in the community"); *Our EGR Homeowners All v City of E Grand Rapids*, No. 346413, 2020 WL 3121035, at *2 (Mich Ct App, June 11, 2020) (finding that appellants' harm was speculative and not different from others in the community).[14] The "special damages not common to similarly situated property owners" language used by the Court of Appeals is not meant to restrict zoning appeals to only property owners. It merely reflects the fact that in the context of zoning decisions the alleged interests typically arise out of property ownership.

The Coastal Alliance also seeks to persuade this Court with other states' interpretations of the language in their statutes governing zoning appeals. How other jurisdictions define the term is irrelevant at this point. The Michigan Legislature has already chosen the narrower "aggrieved" standard for Michigan, and respecting that policy choice means faithfully applying

[14] The Coastal Alliance urges this Court to grant review to square the unpublished decision in *Deer Lake* with the Court of Appeals' decision in this case. It is NorthShore's position that *Deer Lake* was wrongly decided by the Court of Appeals, not because the standard is confusing and needs to be clarified by this Court, but simply because the court incorrectly applied the standard to the facts of that case and found that generalized harms were sufficient to make the appellants aggrieved. However, that unpublished case does not affect Michigan's jurisprudence and does not provide a basis for the Court to review the standard in this matter. Moreover, that the court reached different conclusions in each of these cases as to whether the appellant met the aggrieved-party test says nothing about lower courts' abilities to understand and interpret the standard correctly; it merely shows that application of the standard differs depending on the right asserted in each case and unique facts of the case.

the definition that the Legislature would have gleaned from the jurisprudence at the time that it made that policy decision.

C. The longstanding "aggrieved" standard for zoning cases is consistent with this Court's precedents; the Coastal Alliance's proposed standard is not.

Even if the Court were starting from scratch in interpreting the term "aggrieved" (which it is not), it should wind up with the same standard as the one that has long been applied, based on this Court's own precedents. Those precedents hold (1) that a party is aggrieved only if the decision directly and adversely affects a legally cognizable right or protected interest and (2) the law does not protect against incidental adverse effects of government decisions that are broadly felt by many similarly situated members of the public.

When a statutory term is not defined in the statute (as is the case here), this Court routinely consults a dictionary to give statutory words their ordinary and common meaning. *Hecht v Nat'l Heritage Acads, Inc*, 499 Mich 586, 622 n 62; 886 NW2d 135 (2016). A lay dictionary may be consulted to define a common word or phrase that lacks a unique legal meaning. *Id.* A legal term of art, however, must be construed in accordance with its peculiar and appropriate legal meaning. *Id.* (citations omitted). But if the definitions are the same in both a lay dictionary and legal dictionary, it does not matter which type of dictionary is consulted. *Id.* Here, *Black's Law Dictionary* defines "aggrieved" as "having legal rights that are adversely affected; having been harmed by an infringement of legal rights." *Black's Law Dictionary* (11th ed, 2019). Similarly, *Merriam–Webster's Collegiate Dictionary* (11th ed) defines "aggrieved" as "suffering from an infringement or denial of legal rights."

Consistent with these definitions, this Court has long interpreted the term "aggrieved" to mean that the decision must directly and adversely affect a person's rights in property or some other legally protected interest. See, e.g., *In re Draime*, 356 Mich 368, 371-372; 97 NW2d 11

(1959) ("In legal acceptation a party is aggrieved by a judgment or a decree when it operates on his rights in property or *bears directly upon his interest*." (quoting *In re More's Estate*, 179 Mich 237, 244; 146 NW 319 (1914))); *In re Critchell's Estate*, 361 Mich 432, 451; 105 NW2d 417 (1960) (The term "party aggrieved" refers to "one who, as heir, devisee, legatee, or creditor, has what may be called a 'legal interest' in the assets of the estate, and their due administration." (quoting with approval *Hardy's Estate v Minneapolis & St LR Co*, 35 Minn 193, 194; 28 NW 219 (1886))); accord *Brink*, 81 Mich App at 102-103, 105 (holding that an appellant must allege a "legally cognizable interest in the outcome" and that the appellants in that case asserted "no legally protectable property right or privilege" sufficient to meet the aggrieved party standard).

For instance, in the probate context, to claim one is "aggrieved" by the appointment of an estate administrator, one must have a legally protected interest in the estate. *In re Critchell's Estate*, 361 Mich at 451-452. In *Critchell's Estate*, the insurance company brought an appeal from an order appointing a particular administrator to "protect itself from possible liability under the policy issued." *Id*. at 450. The court held that its status was that of a debtor: "if action is brought against the administrator for damages, and judgment is obtained, such judgment may perhaps be enforced in accordance with the terms of the policy." *Id*. This Court agreed with the rulings in several other jurisdictions holding that "[t]o be aggrieved by a probate decree admitting will to probate or appointing an administrator, a person must have a legally protected interest in the estate which has been adversely affected by the decree." *Id.* at 452 (quoting *City of Bridgeport v Steiber*, 143 Conn 720, 722-723; 126 A2d 823 (1956)). It was not enough to merely have a preference in who the administrator should be or speculate about the potential impact of the decision on the insurance company's liability; because the insurance companies

had no "legally protected interest" in the administration of the estate, they were not "aggrieved" by the probate court's choice of administrator. *Id*. at 452-455.

Correspondingly, in the context of an administrative zoning decision, the appellant must have a legally protected interest in the property governed by the decision, or at least some other legally protected interest that is directly and adversely affected by the decision. When the appellant is the property owner or lessor whose request for approval of a particular use was fully or partially denied, the standard is obviously satisfied. The decision directly affects the applicant's private right to use his or her own land or leasehold. The law protects an applicant's right to develop his property in a manner authorized by the zoning ordinance. *Anchor Steel & Conveyor Co v City of Dearborn*, 342 Mich 361, 369; 70 NW2d 753 (1955).

When the appellant is a third party who has no interest in the property governed by the decision, it must show the decision has a direct adverse effect on some other legally protected interest. See *Draime*, 356 Mich at 372. Often, third parties will assert that their own property rights are somehow affected. But a governmental decision regarding development of certain property will rarely have a direct adverse effect on the property rights of neighboring parcels. And in any event, the law does not protect nearby landowners from the ordinary incidental effects of regulatory land use decisions on neighboring parcels unless those harms are peculiar and unique. See *Spiek v Mich Dep't of Transp*, 456 Mich 331, 349; 572 NW2d 201 (1998).

Third parties such as the Bilys and other members of the Coastal Alliance will typically complain about generalized and incidental harms to their property—such as diminution of value, dust, or other effects on their quiet enjoyment—effects that are naturally incidental to regulatory land use decisions. But the incidental types of harms that are "experienced by all persons similarly situated" are "damnum absque injuria"—a loss for which law provides no remedy. *Id*. at

349-350. Only when the government's decision directly affects the property "in a manner that is unique or peculiar in comparison to the property of similarly situated persons" does the law allow a remedy. See *id*. at 346.

A good example of effects that are peculiar and unique is found in *Richards v Washington Terminal Co*, 233 US 546, 550; 34 S Ct 654 (1914), which this Court discussed in *Spiek*. In *Richards*, "the plaintiff's property was situated so that when the train went through a tunnel, the 'smoke . . . cinders and gasses' from the train were expelled onto the plaintiff's property and into his home by 'a fanning system installed in the tunnel . . . .' " *Spiek*, 456 Mich at 340-341 (quoting *Richards*, 233 US at 550). The U.S. Supreme Court held there *was* a taking of property in that instance.

The point is that the traditional aggrieved standard applied in the Court of Appeals is not foreign to this Court's jurisprudence nor is it too difficult to apply. Rather, it is merely another application of the age-old principle that this Court applied in *Spiek*: "Where harm is shared in common by many members of the public, the appropriate remedy lies with the legislative branch and the regulatory bodies created thereby." *Id*.[15] In the context of zoning, the admonition of this Court in *Spiek* could be restated as, "where harm is shared in common by many members of the community, the appropriate remedy lies with the planning commission or township board."[16]

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[15] In addition to maintaining a healthy respect for the court's proper role, this limitation prevents courts from being overwhelmed with lawsuits "by those who have only an ideological stake in the outcome" and "ensur[es] that [claimants] will raise only their own rights and concerns and that [they] cannot be intermeddlers trying to protect others who do not want the protection offered." See Cohen, *Why Require Standing If No One Is Seated? The Need to Clarify Third Party Standing Requirements in Zoning Challenge Litigation*, 42 Brandeis L J 623, 624 (2004); see also *Brink*, 81 Mich App at 102-103.

[16] Importantly, we are not dealing in this appeal with the question of whether a nuisance claim could be brought against private actors for similar harms resulting from a similar use of property. The question here is whether third parties to a zoning approval are aggrieved by the government's zoning approval on property in which they have no interest. Whether the ultimate use of

Notably, a similar policy undergirds the prudential rule for standing. *Lee v Macomb Co Bd of Comm'rs*, 464 Mich 726, 735; 629 NW2d 900 (2001), overruled in part by *Lansing Schs*, 487 Mich 349. To have standing, the litigant must show that a legal right or substantial interest will be detrimentally affected in a manner *different from the citizenry at large*. *Lansing Schools*, 487 Mich at 372. This limitation on who can pursue judicial relief maintains the separation of powers within the government by preventing courts from unduly interfering with legal or policy decisions that are more appropriately reserved for the Legislature. *Lee*, 464 Mich at 735. It remains judicial policy in Michigan except where the Legislature says otherwise. *Lansing Schools*, 487 Mich at 372.

That said, the ordinary standing rule is not tailored to the local and regulatory nature of zoning decisions. Like the road development decision at issue in *Spiek*, zoning decisions will frequently have some arguable indirect impact on neighboring property and those impacts will always be inherently limited in geographic scope. For that reason, it makes sense that the Legislature would return to a term that has acquired a specially tailored meaning in zoning appeals and decline to adopt language that evokes the ordinary standing rule in *Lansing Schools*.

The Coastal Alliance proposes a different standard for "aggrieved," a distorted version of the rule in *Lansing Schools*, one that is unmoored from Michigan's jurisprudence and the legislative history of the statute at issue. They would essentially have the Court hold that to be aggrieved, one need only identify an interest that is affected to a greater degree than some other citizen within the greater state of Michigan. The Coastal Alliance's proposal runs contrary to this Court's precedents, is unworkable, and provides no meaningful backstop for judicial review.

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the property results in an actionable nuisance is an entirely different question that is not before the Court in this appeal.

First, this proposal would permit an appeal based on any sort of interest—be it stifling business competition, enhancing recreation, or preserving one's legacy—whether or not that interest is legally cognizable or directly affected by the decision. That is not consistent with this Court's definition of "aggrieved," which requires the appellant to show a "legally protected" interest and one that is "directly" affected by the decision appealed. *In re Critchell's Estate*, 361 Mich at 452; *Draime*, 356 Mich at 371-372.

Second, even the ordinary standing analysis requires a comparison to other citizens who share the same interest, not just anyone. For instance, "under general standing principles, a taxpayer has no standing to challenge the expenditure of public funds if the threatened injury to him or her is no different than that to *taxpayers* generally." *Michigan Ass'n of Home Builders v City of Troy*, 504 Mich 204, 226; 934 NW2d 713 (2019) (emphasis added). The ordinary standing analysis actually parallels the traditional requirement in zoning cases that one must be affected in a manner that is different from others similarly situated.

Finally, this Court has not held that aggrieved status (or standing for that matter) can be established merely on a difference in the "degree" of harm. The Court's most relevant precedents in fact counsel the opposite. In *Spiek*, this Court rejected the Court of Appeals' ruling that the plaintiffs must be allowed to show they were "detrimentally affected to a greater degree than that of the citizenry at large in conjunction with the normal use of a highway." 456 Mich at 340, 342, 344-345 (emphasis omitted). It observed that the analysis in prior cases "turned on the fact that the plaintiff suffered harm that *differed in kind, as opposed to degree*, from the harm suffered by others similarly situated or the public at large." *Id*. (emphasis added). This Court explained that "[i]n the context of traffic flow, a degree of harm threshold, as opposed to the well-established difference in kind threshold, would be unworkable both in a practical sense and

from the standpoint of public policy because it would depend on the amount of traffic traveling a particular highway at a particular time that may change over time because of factors unrelated to and out of the control of the state." *Spiek*, 456 Mich at 349. Even under the broader rule of standing, one must show a "special injury" or a substantial interest that is affected in a different "manner," not just to a different degree. *Lansing Schools*, 487 Mich at 372.

Drawing distinctions based on the degree of harm in this context would be equally unworkable. The degree of harm to particular properties in zoning cases would depend on myriad unpredictable and subjective factors that could change over time, such as personal preferences and the sensitivity of the potential appellant. Lines drawn based on the distance from the property granted zoning approval or the purported level of a person's interests would inherently be arbitrary, subjective, and prone to exaggeration.

Allowing an appeal by anyone harmed to a different degree from the greater citizenry of Michigan would mean that any community member could appeal the zoning decisions of that local unit of government. Those who live or work within the community governed by the zoning decision can always allege a greater degree of harm than can those who only occasionally visit or never do so at all. Adopting the Coastal Alliance's overly broad standard would be the equivalent of the courts offering to hold a public hearing on any grievance related to any zoning decision and to operate as a super zoning commission.

* * *

Ultimately, it is apparent that the Legislature intended to adopt the traditional "aggrieved" standard for zoning appeals that was established in the Michigan jurisprudence prior to enactment of the MZEA, and that legislative intent controls here. Had the Legislature not changed the standard and then reverted back, resort to dictionary definitions and the Court's own

precedents to discern the Legislature's intent would be warranted. But in deliberately changing the statute to return to the "aggrieved" standard, the Legislature essentially ratified the Court of Appeals' interpretation and adopted that pre-existing standard as its own. In light of this legislative history, the proper interpretation of the term is one consistent with the prior jurisprudence establishing what it means to be "aggrieved" for purposes of a zoning appeal. That jurisprudence was accurately set forth in *Olsen*.

II. If there is a distinction between "person aggrieved" and "party aggrieved," it is a minor one that is not pertinent to this appeal; the meaning of "aggrieved" in either instance is the same.

The second issue raised by the Court is "whether the meaning of 'person aggrieved' in MCL 125.3604(1) differs from that of 'party aggrieved' in MCL 125.3605, and if so what standard applies." The standard for determining who is "aggrieved" is the same, whether one is a person or a party; and in this case, the analysis under Sections 604 and 605 is exactly the same. If the terms "person" and "party" have a different meaning, that distinction makes no difference in this appeal because NorthShore has not disputed that the Coastal Alliance fit the definition of "person" under Section 604 and "party" under Section 605.

A. "Aggrieved" has the same meaning in Section 604 and Section 605 regardless of whether the appellant is a "person" or "party."

When the Legislature uses the same term in different parts of a statute it is presumed to have the same meaning. *Robinson v City of Lansing*, 486 Mich 1, 17; 782 NW2d 171 (2010). Because both sections use the "aggrieved" standard, application of a different standard under Section 604 is not warranted merely because the section refers to a "person" instead of "party."

The Coastal Alliance points to a one-hundred-year-old case that it claims supports its broad distinction between "person" and "party." But a number of more recent cases from both

this Court and the Court of Appeals suggest that the terms "person" and "party" add no significant meaning in defining who can appeal a decision. In fact, in many cases, courts have used the terms "person" and "party" interchangeably when applying the relevant aggrieved standard. See, e.g., *In re Draime*, 356 Mich at 371-372 (using the phrase "person aggrieved" interchangeably with "aggrieved parties"); *Maxwell v MDEQ*, 264 Mich App 567, 571-572; 692 NW2d 68 (2004) (same); *Village of Franklin*, 101 Mich App at 558 (discussing both person and party aggrieved). *Black's Law Dictionary* likewise uses these terms interchangeably. *Black's Law Dictionary* (11th ed, 2019) (interpreting "aggrieved party" to mean "[a] party entitled to a remedy; esp., a party whose personal, pecuniary, or property rights have been adversely affected by another person's actions or by a court's decree or judgment.—Also termed *party aggrieved*; *person aggrieved*."). In these cases, rather than focusing on the appellant's status as a "person" or a "party," the court focused instead on analyzing whether the appellant was "aggrieved" to determine whether the appellant had a right to appeal a decision. In other words, a determination of whether the person or party is *aggrieved* controls whether he or she has the right to appeal a zoning decision, not his or her status as a "person" or a "party."

At most, the Legislature's use of these terms reflects a procedural distinction that relates to the applicable stage of the zoning appeal. And even the Coastal Alliance acknowledges that this is an appropriate reading of these terms. (Appellant's Suppl Br 28.) But this procedural distinction makes no difference in the ultimate analysis of what it means to be "aggrieved" by the zoning decision appealed.

Read this way, the standards in Sections 604 and 605 are effectively the same. Regardless of whether the appellant challenging a zoning decision is a "person" or a "party," he or she must establish that he or she is "aggrieved" by the decision being appealed. This was precisely

the analysis applied by the Court of Appeals in reviewing the "person aggrieved" standard for appeals *to* a ZBA. *DF Land Dev, LLC v Ann Arbor Charter Twp*, No. 287400, 2009 WL 2952442 (Mich Ct App, Sept 15, 2009), lv den 485 Mich 1102 (2010). In that case, the circuit court held that the appellant could not demonstrate standing as a person aggrieved under the Township Zoning Act, MCL 125.290(2). *Id.* at *4. In interpreting the "person aggrieved" standard, the Court of Appeals relied on *Brink* and *Village of Franklin*—which both involved an interpretation of the "party aggrieved" standard—and held that a person appealing to the ZBA must also "allege and prove that he has suffered special damages not common to other similarly situated property owners." *Id.*

The Coastal Alliance argues that "a ZBA is not delegated the authority to make legal interpretations or pass on the application of state statutes or judicial decisions to facts coming before it." (Appellant's Suppl Br 31.) It believes "standing determinations are beyond the scope of a ZBA's statutorily-conferred powers" and that the determination of whether someone is "aggrieved" should be left to the circuit court. (*Id*.) This argument makes no sense and would effectively read the "aggrieved" requirement out of Section 604.

First of all, it has long been recognized that those carrying out powers granted by statute have the power to construe the statute they are charged with executing, and that includes interpreting the scope of their own power under that statute. *In re Complaint of Rovas Against SBC Michigan*, 482 Mich 90, 103; 754 NW2d 259 (2008) (quoting *Boyer-Campbell Co v Fry*, 271 Mich 282, 296; 260 NW 165 (1935) ("[T]he construction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration and ought not to be overruled without cogent reasons.")); *Tel Ass'n of Michigan v Pub Serv Comm'n*, 210 Mich

App 662, 670; 534 NW2d 223 (1995) (recognizing the power of an agency to interpret "the scope of the agency's power").

Section 604 is the provision that grants the ZBA authority to hear appeals in the first place, and the ZBA is inherently authorized to consider whether it is properly doing so. See *Szluha v Charter Twp of Avon*, 128 Mich App 402, 406-407; 340 NW2d 105 (1983) ("[E]ach township board of zoning appeals is empowered to "act upon *all questions* as they may arise in the administration of the zoning ordinance.' ") (citation omitted). There is no logic to or authority for the Coastal Alliance's bald assertion that a ZBA cannot decide under Section 604 whether it has authority to hear an appeal. Nor is there any basis for the assertion that a ZBA is not fit to issue legal interpretations or make factual findings, when that is exactly what the MZEA requires a ZBA to do by authorizing it to interpret zoning ordinances and decide variance requests. See MCL 125.3604.

Second, the Coastal Alliance's reading would, in effect, require a ZBA to review every appeal filed regardless of whether the authority to review a particular appeal actually existed under Section 604. In fact, the Coastal Alliance asserts that a person need only claim that he or she is affected differently than the citizens in the state to qualify as a "person aggrieved" under Section 604. This would render Section 604's limitation on who could file an appeal in the ZBA effectively meaningless.

Finally, the Coastal Alliance's lengthy discussion of the definitions of "person" and "party" and who may appeal to the ZBA as a "person" or the circuit court as a "party" is irrelevant in this matter. NorthShore has never disputed that the Coastal Alliance was a "party" to the ZBA proceedings. Nor did the ZBA, the circuit court, or the Court of Appeals base their decisions on whether the Coastal Alliance was a "party." This question is, therefore, not before this

Court. The only question before this Court is whether the Coastal Alliance is "aggrieved" by the decision appealed based on the longstanding interpretation of that term in the administrative zoning context. Because both Section 604 and Section 605 require an appellant to establish that he or she is "aggrieved," the "person aggrieved" standard in Section 604 and the "party aggrieved" standard in Section 605 are, for purposes of this appeal, the same.

B. Because the Coastal Alliance must be "aggrieved" by the outcome of the zoning decision, it makes no difference whether Section 604 or Section 605 applies; the result is the same.

In some cases, there will be a difference in the analysis under Section 604 versus Section 605, not because the standards are different, but because the outcome of the decision appealed and the person who filed the appeal are different. But that is not the case here, so it ultimately makes no difference which section the lower courts applied; the result would be same.

To be aggrieved, the Coastal Alliance had to have suffered special damage from the *outcome* of the decision being appealed. See *Federated Ins*, 475 Mich at 291 ("To be aggrieved, one must have some interest of a pecuniary nature in the *outcome* of the case . . . .") (citation omitted); *Brink*, 81 Mich App at 102-103 (indicating that the aggrieved party requirement should be limited to those who could allege a "legally cognizable interest in the *outcome*"). The decision appealed under Section 604 was the Planning Commission's decision. The decision appealed under Section 605 was the ZBA's decision. But the outcome of both decisions was exactly the same. The outcome of the Planning Commission's decision was that NorthShore held a valid PUD and a Special Approval Use for a marina. The outcome of the ZBA's decision was that NorthShore still held a valid PUD and a Special Approval Use for a marina. The reasons given for that result in each decision were different, but the outcome is what matters, and the outcome was the same.

Ultimately, the ZBA, the circuit court, and the Court of Appeals all analyzed whether the Coastal Alliance was aggrieved by the outcome of the issuance of a PUD and Special Approval Use to NorthShore. And given that this was the exact issue raised by the Coastal Alliance in its appeal to the circuit court, the Coastal Alliance received exactly the review it was seeking. Regardless of which standard is applied, the ZBA and lower courts properly applied the same analysis to determine that Coastal Alliance had not established that it was aggrieved by the PUD and Special Approval Use.

III. The Court of Appeals did not err in affirming the Allegan Circuit Court's dismissal of appellant's appeals from the decisions of the Saugatuck Township Zoning Board of Appeals.

The ZBA, the circuit court, and the Court of Appeals all appropriately considered whether the Coastal Alliance was aggrieved by the zoning approvals and reached the same correct conclusion—the Coastal Alliance has not alleged and proved special damages that are dissimilar from the impact that other similarly situated property owners or community members might experience. Some allegations of harm fail to identify a legally cognizable right or protected interest, others consist of little more than unsubstantiated conjecture or complaints about the indirect and generalized effects of developing the property that are not dissimilar from impacts felt by any other similarly situated person. And finally, none of the alleged harms arise from the specific zoning approvals given; they instead arise from the underlying fact that the property will be residentially developed with residential homes and boat docks, something that could be done without these zoning approvals.

A. The Court of Appeals correctly held that the Coastal Alliance has not suffered special damages dissimilar to other similarly situated property owners or community members.

In its Supplemental Brief in Support of its Application, the Coastal Alliance relies most heavily on the allegations of one family—the Bily family—on its mission to thwart the development of the NorthShore Property. (Appellant's Suppl Br 33-35.) Presumably, this is because the Bilys are the only Coastal Alliance members who own property within a half mile of the NorthShore property. The Coastal Alliance asserts that the proposed development "would reduce the family's recreational use of the river due to increased boat traffic and safety concerns; would impact the aesthetic beauty and surrounding landscape of the Bily property on the Kalamazoo river; and would impact the economic value of the property due to a change in viewshed and the character of the river." (*Id.* at 34.) The Coastal Alliance appears to believe that the harms to the Bilys are somehow dissimilar because the Bilys are closer to the NorthShore Property than other similarly situated property owners (although they are still almost a half mile away). But this is a difference in degree, not in kind, and therefore irrelevant.[17]

The Bilys are concerned that the development would reduce the family's recreational use of the river. But they have not shown that they have a legally protectable interest in preserving the idyllic nature of someone else's private property merely to preserve their own recreational

[17] It is impossible to conceive of a situation where every person sharing the same interest would be affected to exactly the same degree. If that were the standard, it could be met in every single instance. The Court would then at best be effectively applying the same standard that it did under the "interest affected" language. At worst, it would be applying a standard even broader than the one applied under *Lansing Schools*. To have any practical significance, the "aggrieved" standard requires the special damages to be different in kind from those of other property owners similarly situated, not just different in degree. *Vill of Franklin*, 101 Mich App at 557-558; *Brink*, 81 Mich App at 103 n 1.

enjoyment of a public body of water.[18] The property is, after all, lawfully zoned for residential use, and the Bilys have not demonstrated that they hold a conservation easement or similar legal interest in the property. The Bilys have pointed to no legal authority showing that their recreational interest in the river gives them any protected interest in how NorthShore develops its private property.

Moreover, the same effect of development would be experienced by any person floating down the Kalamazoo River or boating on Lake Michigan. As the circuit court has previously noted, "the waters of Lake Michigan and the Kalamazoo river [are] shared by the community at large and not a special interest." (Appellant's App 0085a.) The Coastal Alliance has not demonstrated how the Bilys would suffer "special damages" that are not common to others similarly situated. To the contrary, the Bilys' claim that its recreational use of the river would decrease as a result of increased boat traffic and safety concerns is precisely the type of injury that this Court has rejected because it is shared in common by many members of the public such that it would "place within the judicial realm that which is inappropriate for judicial remedy." *Spiek*, 456 Mich at 349.

The Bilys contend that the viewshed and character of the river will be changed and that their view of the project and laydown area will change in a way that impacts their enjoyment of their neighboring property. However, their right to enjoy their own property does not extend to throttling the development of property owned by others around them. That is not a legally

[18] The NorthShore Property is residentially zoned private property imbued with the same riparian rights as any other similarly zoned waterfront owner on the Kalamazoo River.

cognizable interest.[19] And again, others similarly situated with a view of the property, including residential and business tenants, would be impacted in the same manner.

As for the Bilys' concern that a change in the character of the river could impact the economic value of their property, this claim is nothing but unsubstantiated conjecture which the Court of Appeals has rejected as insufficient. There is no evidence in the record that a change in the viewshed—which would also occur if NorthShore decided to build residential homes on the property without obtaining approvals—would negatively impact the Bilys' property.

But even if such harm could be shown, again, every property owner around—including those across the river—would experience the same kind of harm. This is a classic example of where a comparison to other "property owners" is called for, and it shows that the Bilys are affected in a manner common to those similarly situated. The Bilys may be closer than other property owners (such a distinction could be drawn in every case), but the asserted harm of a decrease in property values is of a kind that any property owner in the area could allege, particularly those across the river with a view of the property. Again, this would be a difference in degree, not in kind.

The Court of Appeals correctly held that "all of the articulated concerns are either speculative, broad environmental policy matters, or pertain to harms that could be suffered by

[19] Not only are the Coastal Alliance's aesthetic concerns insufficient under the law, but they are also unsupported by the facts in this matter. The setting of the Bilys' cottage is not as serene as the Coastal Alliance's brief or their affidavits would suggest. To the contrary, their cottage is directly next door to Pine Trail Camp, which hosts week-long summer camps, weekend retreats in the fall, winter, and spring, and family camps throughout the year. (Appellee's App 0145b.) The camp's dock, from which teenage campers daily launch kayaks and paddle boards, is located immediately adjacent to the Bily cottage. A row of camp dormitories/cabins is also located right next to the Bily cottage— the closest of which is only 30 feet or so away. (Appellee's App 0144b.) And, the east side of the Kalamazoo River directly south of the Bilys' cottage is lined with upwards of 30 cottages and boat docks, yet they are "devastated" by the potential construction of 23 homes almost a half mile away.

any nearby neighbor, business, or tourist." (Appellant's App 0102a.) These are the exact types of harms the Court of Appeals has long held are insufficient to confer "aggrieved party" status because they are not unique harms common to others in the community holding similar interests.

In addition to the alleged "harms" that were already properly rejected by the Court of Appeals, the Coastal Alliance now references harms from denuded vegetation, blowing sand, and destabilization of the dune that it claims it learned about *after* the ZBA hearing. Not only are these harms entirely unsubstantiated, this information was not made available to the ZBA and is therefore outside of the record on appeal. See MCR 7.109, 7.122(E). They cannot be properly considered at this point.

B. The question of whether the other Coastal Alliance members were "aggrieved" is not preserved for review, but in any event their asserted harms fail to meet the proper "aggrieved" standard.

In addition to its argument that the Bilys satisfy the standard in *Olsen*, the Coastal Alliance mentions a number of alleged harms to a handful of its other members—including harms to their members' legacy and businesses; harms to the environment, hydrology, and aquatic habitat; and harms to the local real estate business and property values—and claims those are sufficient to meet the *Lansing Schools* standard. The Court of Appeals expressly declined to decide that issue, so it is unnecessary at this point for this Court to review it, even if that were the correct standard (which it is not). The Coastal Alliance also notes in passing that these harms would not be shared by other similarly situated persons, but has made no effort to show how these supposed harms impact a legally cognizable interest or are based on anything other than speculation and conjecture. Consequently, the issue is not preserved for review in this Court. *Mitcham v City of Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959) ("It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then

search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow.")

However, a discussion of those harms is useful for illustrating application of the various elements of the "aggrieved" standard. Take, for instance, the alleged harm to the late Senator Birkholz's legacy as a result of the proposed boat basin. To be aggrieved, there must be an infringement of a protectable interest. The Coastal Alliance has presented no authority to support the idea that a person's legacy is a legally cognizable right or protectable interest. Such an interest gives it nothing more than an ideological stake in the outcome of a zoning appeal. The same is true of a person's "generational devotion to the preservation of the river mouth area" or interest avoiding "a poor precedent" for others. (Appellant's Suppl Br 39-40.)

Moreover, the alleged harms are no different in kind from what would be experienced by those sharing the same interest, be it as a property owner, business person, or otherwise. Every business owner along the river—and frankly, a vast majority of the community—has an economic interest in safe and efficient travel along the river. The Coastal Alliance fails to explain how the alleged concerns regarding traffic and safety on the river impact its members any differently from other business owners or property owners in the surrounding area.

Ultimately, the Coastal Alliance has failed to identify how the Court of Appeals and the circuit court erred in concluding that "all of the articulated concerns are either speculative, broad environmental policy matters, or pertain to harms that could be suffered by any nearby neighbor, business, or tourist." (Appellant's App 0102a; Appellee's App 0124b, 0126b.) Thus, the Coastal Alliance's claims fail for this additional reason.

C. The Coastal Alliance's alleged harms do not even arise from the zoning decisions at issue—a jurisdictional prerequisite for review.

The lower courts' decision is correct for yet another reason, one they did not address: for a party to be aggrieved, the alleged harm must not only be not common to those with similar legally cognizable interests, but it must also arise from the zoning decision appealed "rather than injury arising from the underlying facts of the case." *Olsen*, 325 Mich App at 181 (quoting *Federated Ins*, 475 Mich at 291-292). The harms alleged by the Coastal Alliance (i) would arise from any development of the property at all, and are not concerns arising from the particular zoning decisions at issue; (ii) arise from approvals falling under the purview and jurisdiction of the United States Army Corps of Engineers, not the zoning approvals being appealed; or (iii) arise from anticipated activities in the laydown area which is not part of the PUD and was not approved by the Planning Commission. Because that jurisdictional requirement for invoking the circuit court's appellate jurisdiction (i.e., that the alleged harms arise from the actual zoning decisions being appealed) is entirely lacking, the outcome of this case does not change no matter how the issues discussed above would be resolved.

"It is a general rule in this state and elsewhere that only a party aggrieved by a decision has a right to appeal from that decision." *Ford Motor Co v Jackson*, 399 Mich 213, 225; 249 NW2d 29 (1976). This rule is not particular to zoning appeals. In other contexts, "[t]he only difference [between standing on appeal and ordinary standing] is a litigant on appeal must demonstrate an injury arising from either the actions of the trial court or the appellate court judgment rather than an injury arising from the underlying facts of the case." *Id.* The requirement that an appellant must be aggrieved by the decision appealed is so essential to the nature of appellate review that it is a jurisdictional prerequisite. See MCR 7.203(A); *Olsen*, 325 Mich App at 181.

The Coastal Alliance's alleged harms arise from the development itself, i.e., the development of the NorthShore property in any manner, and not from the Planning Commission's decision to authorize the specific PUD and Special Approval Use at issue. The Coastal Alliance asserts that the proposed development "would reduce the [Bily] family's recreational use of the river due to increased boat traffic and safety concerns; would impact the aesthetic beauty and surrounding landscape of the Bily property on the Kalamazoo river; and would impact the economic value of the property due to a change in viewshed and the character of the river." (Appellant's Suppl Br 34.) But all of these alleged impacts would also allegedly occur if NorthShore developed the area as allowed by right under the Zoning Ordinance without obtaining any special approvals from the Planning Commission.

The NorthShore property is zoned R-2, Riverside Residential District, meaning that NorthShore could develop residential homes with waterfront access without obtaining any special approvals from the Planning Commission. Under the Saugatuck Township Zoning Ordinance, within the same footprint as the PUD and Special Approval Use occupies, NorthShore could have developed 33 residential home sites (Section 40-275) and 48 boat slips (Section 40-908) by right, without obtaining any special approvals from the Planning Commission.[20] (Appellee's App 0132b.) In contrast, NorthShore's PUD and Special Approval Use will contain 23 residential home sites and 50 boat slips.[21] The harms allegedly suffered by the Coastal Alliance would not be meaningfully different if NorthShore developed the property with no

[20] This calculation of "by right" boat slips does not take into account the additional water frontage that NorthShore's property has on the Kalamazoo River both to the east and west of the PUD footprint.

[21] The PUD mechanism simply allows for flexibility in laying out the development. Rather than having residential homes evenly spaced throughout the development on large lots, the PUD allows for the homes to be placed in a more compact layout and the open space to be consolidated while keeping the same overall density.

zoning approvals. The Coastal Alliance's alleged harms therefore arise from the fact that the property is being developed at all, not from the particular zoning approvals being appealed. *Olsen*, 325 Mich App at 181. They have no real stake in whether Coastal Alliance has 52 boat slips or just 48, or whether the 33 residences can be developed in the sort of configuration that requires a PUD. Their real grievance is with the policy decision reflected in the zoning ordinance to allow development of the property at all, a policy decision made long ago by an entirely different body.

The same is true of the generalized concerns raised by the other Coastal Alliance affiants, which include: safety concerns resulting from increased boating traffic, damage to the aquatic habitat due to dredging, and economic interests due to changes in the recreational and aesthetic values of the area. (Appellant's Suppl Br 38-39.) All of these alleged harms would occur even if the property were developed by right without the PUD and marina approvals, and therefore arise from the fact that NorthShore is permitted by right to develop its private property with residential homes and boat docks, not from the particular zoning approvals being appealed.[22]

The other concerns raised by the Coastal Alliance—impacts resulting from dredging and the laydown area—are directed at the wrong governmental entity. This appeal arises from the Township's approval concerning *use* of the land—i.e., the development of a site condominium and special approval of a marina. It is EGLE and the United States Army Corps of Engineers that regulate whether and how the boat basin may be dredged and where the excavated sand may be placed, not the Township. In fact, the Township expressly conditioned its Special Approval

[22] This conclusion is further supported by the fact that the Coastal Alliance's alleged harms are virtually identical to those alleged by the Coastal Alliance in 2014 regarding a proposed interior road project that the Coastal Alliance described as "vastly different" from the current plans (see comparison table on page 11 above).

Use on NorthShore obtaining the necessary approvals to excavate the boat basin from other entities:

> [The applicant] shall obtain all required state and federal permits and approvals to construct the boat basin, including, without limitation, any that are needed from the United States Army Corps of Engineers (USACE), the United States Environmental Protection Agency (USEPA), and the Michigan Department of Environmental Quality (MDEQ). [Appellant's App 0015a.]

Moreover, the laydown area is not even part of the PUD that was approved by the Planning Commission. As noted above, the PUD only comprises a small portion of the NorthShore property. More than 250 acres of NorthShore's property are not part of the PUD being appealed. It should not be surprising that there are a number of earthmoving activities occurring on the NorthShore property that are not part of the PUD. The placement of sand in the laydown area is one such activity that is occurring on a portion of the NorthShore property but not within the PUD. (Appellee's App 0033b, 0038b.) The Coastal Alliance's complaints about the dredging and laydown yard have no real connection to the Township's approval of the PUD and the Special Approval Use.

Alleging injuries purportedly resulting from a decision of the Army Corps or activities occurring outside of the PUD are unquestionably insufficient to demonstrate aggrieved party status as to the actual zoning approvals being appealed in this case.

Finally, the Coastal Alliance's reliance on *Kallman v Sunseekers Prop Owners Ass'n, LLC*, 480 Mich 1099; 745 NW2d 122 (2008), and *Michigan Citizens for Water Conservation v Nestlé Waters North America Inc*, 479 Mich 280; 737 NW2d 447 (2007), *overruled by Lansing Schools*, 487 Mich 349, is misplaced. First, these decisions have nothing to do with the aggrieved-party test. And second, even if these decisions suggest that the Coastal Alliance's alleged harms would be sufficient under the general-standing test adopted in *Lansing Schools*,

they would not be under the MZEA. The Coastal Alliance would still need to demonstrate (1) special damage to a legally cognizable interest, (2) that this harm is not suffered by others in the community sharing the same interest, and (3) that it arises out of the zoning decisions appealed. It simply cannot make that showing.

In sum, even if this Court rejects the Court of Appeals' interpretation that "aggrieved party" means an appellant that suffers unique harms different from others with similar legal interests, the Coastal Alliance's alleged aesthetic, recreational, or economic harms do not establish that the Coastal Alliance is aggrieved by the zoning approvals that it has appealed. Their grievances are with a legislative decision to zone the NorthShore Property for residential development, approvals by other state and federal agencies, and activities outside of the scope of the zoning approvals being appealed. Because the Coastal Alliance cannot satisfy that jurisdictional prerequisite, the separate issues it has raised in its application lack significance not only to the jurisprudence of the state but also to the outcome of this case.

CONCLUSION AND REQUESTED RELIEF

Michigan law does not permit property owners to use the zoning-appeal process as a sword for striking down developments they dislike, even if the development incidentally affects their interests. It only allows persons to use the zoning appeal as a shield to defend legally cognizable rights and protected interests from special damage arising from the particular zoning decision appealed that is not shared by other similarly situated. This standard has become embodied by the term "aggrieved" after nearly half a century of judicial interpretation, and the Legislature deliberately adopted that standard for the MZEA. This standard is same whether the term "aggrieved" used in conjunction with the term "person" or "party," which merely describes the procedural status of the appellant.

Further, there is no merit in the Coastal Alliance's claim that it is harmed by the decisions it appealed. Its only objective is to thwart development of NorthShore's private property, in which it has no property right or legally cognizable interest. That is not a valid basis for invoking judicial review of the specific zoning approvals at issue. Those approvals govern only the manner of development, not whether any development can take place on the property at all. To the extent any rights in property or other legally cognizable interest were affected, Coastal Alliance has not shown those effects are uncommon to other similarly-situated community members. The ZBA, the circuit court, and the Court of Appeals all correctly determined that the Coastal Alliance is not "aggrieved" by these decisions. For these reasons, the Court should deny review or affirm.

Respectfully submitted,

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